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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/717,775

11/20/2003

John A. Griego

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8387

28075 7590 11/09/2010
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EXAMINER

PRONE, CHRISTOPHER D

ART UNIT

PAPER NUMBER

3738

MAIL DATE

DELIVERY MODE

11/09/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/717,775	Applicant(s) GRIEGO ET AL.	
	Examiner CHRISTOPHER D. PRONE	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-7,20-37,39,40 and 42-50 is/are pending in the application.
- 4a) Of the above claim(s) 5,6,20-36 and 44-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,7,37,39,40,42 and 43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/12/10 has been entered.

Priority Date

The priority date of this application is its filing date, 11/20/03.

Status of Claims

Claims 2-4, 8-19, 38, and 41 have been cancelled.

Claims 1, 5-7, 20-37, 39, 40, and 42-50 are pending.

Claims 5, 6, 20-36, and 44-50 have been withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 37, 39, 40, and 43 are rejected under 35 U.S.C. 103 as being unpatentable over Kline USPN 5,376,094 in view of Savage USPN 6,530,899 B1.

Kline discloses the invention substantially as claimed being a surgical snare device comprising a tubular sheath 14 having a handle 10, a shaft 12 that is slidable within the sheath, a snare loop 20 having a plurality of legs attached at the end of the shaft that is slidable within the sheath moving it from an expanded position to an unexpanded position. However, Kline does not disclose a swivel connection between the shaft and snare loop.

Savage teaches the use of a swivel connection between two elements comprising a bearing encased in a housing [3:44-49] in the same field of endeavor for the purpose of preventing kinking of flexible medical hoses.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the crimp connection of Kline with the bearing swivel connection comprising swivel housing and bearings as taught by Savage in order to allow easy rotation without kinking of the cables.

In regards to the amended language of claim 37 requiring the equivalent one to one movement of the handle on the shaft and the activation member, Kline teaches

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that it is old and well known in the art for such ratios. Kline goes on to teach the preference for a greater ratio when moving the activation member greater distances. However, Kline does not include any language teaching against the one to one ratio. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to interchangeably use one to one or two to one ratios with the device of Kline depending on the actual surgery being performed. When a smaller polyp is being removed, not requiring a long extension of the activation member, the one to one ratio would be used in order to provide the user with the most tactile feedback.

Claims 7 and 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kline in view of Savage as applied to Claims 1, 3, 37, 39-41, and 43 above, and further in view of United States Patent 4,326,530 Fleury Jr.

Kline as modified by Savage discloses the invention substantially as claimed being described supra. However, the combination does not disclose that the surgical loop includes a braid.

Fleury Jr teaches the use of a surgical loop comprising a braid in the same field of endeavor for the purpose of providing a loop with enhanced fidelity giving the user a better feel for what is happening with the loop.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the braided loop of Fleury Jr with the surgical snare device of Kline as modified by Savage in order to provide a loop with enhanced fidelity.

Response to Arguments

Applicant's arguments filed 10/12/10 have been fully considered but they are not persuasive. The applicant argues that the new language defining the intended self-orientating function of the snare loop is not disclosed by the combination. However, this intended function and configuration is inherent when using surgical snares with bearing swivel joints. Therefore, the device of the combination will inherently perform in the same manner as that of the claimed device.

The applicant also argues that the Kline fails to disclose the one to one ratio movement of claim 37. This is not persuasive because Kline specifically discloses that it is old and well known. Kline also teaches a benefit of that ratio. However, Kline focuses on the preferred ratio of his device. This language fails to rise to the level required to be teaching against language. Additionally the examiner has provided motivation, providing the maximum tactile feedback when not extending the device over a long extended distance.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER D. PRONE whose telephone number is (571)272-6085. The examiner can normally be reached on Monday through Fri 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher D Prone
Examiner
Art Unit 3738

/Christopher D Prone/

/Corrine M McDermott/

Supervisory Patent Examiner, Art Unit 3738